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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-04730 (SMB)

4 - - - - - x

5 In the Matter of:

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7 IRVING H. PICARD, ESQ., TRUSTEE FOR THE SUBSTANTIV.,

8 Plaintiff,

9 v.

10 EDWARD BLUMENFELD,

11 Defendant.

12 - - - - - x

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14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 November 18, 2014

19 10:02 AM

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21

22 B E F O R E :

23 HON STUART M. BERNSTEIN

24 U.S. BANKRUPTCY JUDGE

25 ECRO: J. CHIEN

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1      Hearing re: Motion to Approve a Settlement Agreement By and  
2      Between the Trustee and the Defendants

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25      Transcribed by: Jamie Gallagher

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1 P R O C E E D I N G S

2 THE COURT: Be seated. Madoff.

3 MR. SIMON: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. SIMON: Howard Simon and my colleague, Kim  
6 Longo, from Windels Marx on behalf of Irving Picard as  
7 Trustee.

8 Before Your Honor today is the Trustee's 9019  
9 motion. There is no objection, so my remarks will be brief  
10 but I'll give you an overview of the action, the process  
11 that led us to the settlement, the benefits of the  
12 settlement, and (indiscernible) factors commonly used by the  
13 Court to support approval of this settlement.

14 THE COURT: Go ahead.

15 MR. SIMON: The Trustee's complaint seeks to  
16 recover fraudulent transfers and conveyances received by  
17 defendants and to subordinate (indiscernible).

18 THE COURT: Hold it down back there. Go ahead,  
19 sorry.

20 MR. SIMON: And to subordinate or disallow certain  
21 defendant customer claims. The defendants in the case  
22 include Edward Blumenfeld, his family members -- excuse me  
23 -- a number of entities that were involved in his real  
24 estate development business, and a number of family trusts.  
25 The trustee's avoidance claims includes claims against

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1 defendants totaling \$88 million during the six year  
2 statutory period of which the sum of 27 million constitutes  
3 fictitious profits.

4 THE COURT: What is it during a two year period?

5 MR. SIMON: During the two year period it is 65  
6 million, and during the two year period the fictitious  
7 profits equals 13 million. A customer claim which the  
8 trustee seeks to subordinate or disallow total approximately  
9 \$29 million. The process that ultimately led to this  
10 heavily negotiated settlement began pursuant to a  
11 stipulation and order so ordered by Judge Lifland on  
12 August 27th, 2012, pursuant to which the trustee of the  
13 defendants agreed to exchange limited discovery and to  
14 mediate the issues presented in the case. The parties  
15 engaged in multiple mediation sessions, through a long  
16 period of time, until March 17th, 2014, where the mediation  
17 ended without a settlement. However, subsequent to the  
18 mediation, the parties continued to negotiate and ultimately  
19 were successful in achieving a settlement on  
20 October 16th, 2014.

21 During this two year period, in addition to  
22 mediating and negotiating, the trustee's counsel conducted  
23 an extensive investigation of the defendant's dealings with  
24 Madoff and the MLIS, and reviewed and analyzed thousands --  
25 voluminous documents regarding the defendant's transactions

1 with Madoff and the MLIS.

2 The settlement, which will end the litigation  
3 between the trustee and the defendants, and permeate and  
4 resolve the trustee's avoidance claims, the defendant's  
5 customer claims, and all matters as set forth in the  
6 settlement agreement, will result in substantial benefit in  
7 a form of payments for the fund of customer property. At  
8 the closing, which will occur shortly after an approval  
9 order, if it is granted by the Court becomes final,  
10 defendants will pay a lump sum payment of \$32,750,000 at a  
11 closing.

12 In addition, at the closing, the defendant's  
13 customer claims of approximately \$29 million will be fully  
14 assigned to the trustee, which will result in additional  
15 funds available at closing for distribution to customers.

16 THE COURT: Will the trustee allow those claims?

17 MR. SIMON: The trustee will allow those claims  
18 once they are assigned, I am quite assured, Your Honor.

19 THE COURT: Okay.

20 MR. SIMON: Based on the current distribution of  
21 approximately 46 percent to Madoff customers with allowed  
22 claims, this will result with a payment at closing of over  
23 \$50 million. In addition, since the trustee now will have  
24 the allowed claims, the value of those claims could increase  
25 up to their full value of the claims that were ultimately

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1 paid in full which would result in a settlement value of  
2 approximately \$62 million. We think that these settlement  
3 benefits will benefit greatly the fund of customer property,  
4 and we are therefore asking the Court to approve the  
5 settlement.

6 The factors that the Court typically uses in  
7 considering settlements, we think strongly support the  
8 settlement here. In addition to the contribution to the  
9 fund of customer property, which I've mentioned, the  
10 settlement eliminates substantial risks and uncertainty of  
11 litigation, including over what Your Honor knows is a highly  
12 contentious issue as to its defendant's good or bad faith,  
13 and the trustee's ability to recover transfers representing  
14 principal as opposed to fictitious profits, and the whole  
15 issue of two year transfers versus six year transfers. All  
16 of those uncertainties of litigation are resolved by this  
17 settlement.

18 In addition, the settlement also eliminates the  
19 expense and delays of such litigation which not only entail  
20 litigation in terms of proving liability, all the motion  
21 practice, and all the appeals that are -- have been very  
22 common in the Madoff cases. While not a predominant factor,  
23 the settlement also avoids any difficulties of collection.  
24 In light of the fact that the trustee's avoidance claims are  
25 against literally dozens of individual entities and family

1       trusts.

2                         Finally, there can be no question that the  
3       settlement is an arm's length settlement. As I mentioned  
4       earlier, this has been an arduous two year process of  
5       mediations and negotiations resulting in a heavily  
6       negotiated, but we believe very beneficial settlement. For  
7       all those reasons, the trustee has submitted an affidavit  
8       supporting the settlement indicating that in his business  
9       judgment, it is both reasonable and in the best interest of  
10      the estate and we ask the Court to approve the settlement.

11                         THE COURT: Thank you.

12                         MR. BELL: Kevin Bell on behalf of the Securities  
13      Investor Protection Corporation.

14                         SIPC wholeheartedly supports this settlement. I  
15      would note that the current value, when the trustee makes an  
16      allocation in the near future, this would be valued at about  
17      a quarter of one cent, which would go to customers and raise  
18      us above the 4606 cents and I would ask the Court to --

19                         THE COURT: Thank you.

20                         MR. BELL: -- approve the settlement.

21                         THE COURT: Does anyone else want to be heard?  
22      All right.

23                         I'll approve the settlement. It's the result of  
24      an arm's length mediation process and I note that the  
25      potential value of the settlement is nearly five times the

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1       fictitious profits claims in a two year period. The balance  
2       of the claim has problems that you've mentioned: two years  
3       versus six years. Defendant's knowledge in terms of  
4       reaching back six years, so given the Iridium factors  
5       announced by the Second Circuit, I'm satisfied. This  
6       settlement falls well above the range -- the lowest point on  
7       the range of reasonableness and I'll approve it. You can  
8       submit an order, thank you. And submit a separate order  
9       closing the adversary proceeding.

10                    MR. SIMON: We will do that, thank you, Your  
11                    Honor.

12                    THE COURT: Thank you.

13                    ALL: Thank you, Your Honor.

14                    (Whereupon these proceedings were concluded at 10:09  
15                    AM)

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1 C E R T I F I C A T I O N

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3 I, Jamie Gallagher, certify that the foregoing transcript is

4 a true and accurate record of the proceedings.

5

6 Jamie  
7 Gallagher

Digitally signed by Jamie  
Gallagher  
DN: cn=Jamie Gallagher, o, ou,  
email=digital1@veritext.com,  
c=US  
Date: 2014.11.19 16:12:44 -05'00'

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13 Suite 300

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15 Mineola, NY 11501

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17 Date: November 19, 2014

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[&amp; - dozens]

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